

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Respondent,)	
)	
v.)	Criminal No. 04-233
)	Electronically Filed
CLARENCE M. GREEN, JR.,)	
)	
Petitioner.)	

**MEMORANDUM ORDER OF COURT RE: *PRO SE* PETITIONER'S MOTION FOR
ISSUANCE OF CERTIFICATE OF APPEALABILITY (DOC. NO. 242)**

In April 2005, Petitioner, Clarence Green, was indicted by a federal grand jury on six counts related to controlled substance distribution and firearms violations. Doc. No. 42. Petitioner was found guilty of the conduct charged in all six counts by a jury of his peers. Doc. Nos. 84 and 85. In July 2006, Petitioner was sentenced by this Court to be committed to the Bureau of Prisons for a total of 300 months, which is to be followed by a 5 year term of supervised release. Doc. No. 112. Petitioner appealed his sentence to the United States Court of Appeals for the Third Circuit. Doc. No. 114. The United States Court of Appeals for the Third Circuit affirmed Petitioner's sentence in November 2007. Doc. No. 133.

Since that time, Petitioner has filed several motions to set aside his sentence: Motion to Vacate under 28 U.S.C. § 2255 (Doc. No. 134) and Motion for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense (Doc. No. 202). The Court has denied each of Petitioner's motions. See Doc. No. 203 (denying Motion for Retroactive Application of Sentencing Guidelines to Crack Cocaine Offense); Doc. No. 229 (denying Motion to Vacate under 28 U.S.C. § 2255 following an evidentiary hearing). Petitioner appealed this Court's denial of his 28 U.S.C. § 2255 Motion. Doc. No. 231. In February 2013, the United States

Court of Appeals for the Third Circuit issued a Certified Order in which it denied a certificate of appealability because Petitioner had not demonstrated that “jurists of reason would debate the denial of his constitutional claims.” Doc. No. 237.

Presently before this Court is Petitioner’s *Pro Se* Motion for Issuance of a Certificate of Appealability in which he moves this Court to issue a Certificate of Appealability because of recent decisions by the United States Supreme Court. Doc. No. 242. Specifically, Petitioner contends that the United States Supreme Court’s rulings in *Alleyne v. United States*, 133 S.Ct. 2151 (2013) and *Descamps v. United States*, 133 S.Ct. 2276 (2013) impact his sentence. *Id.* He further argues, without elaboration, that his constitutional rights under the Speed Trial Act were violated. The Government opposes Petitioner’s Motion. Doc. No. 244.

To the extent that this Motion can be construed as a motion of the first instance, the Court finds that Petitioner cannot demonstrate that he is entitled to relief from his sentence on the grounds raised. Petitioner was sentenced well before the United States Supreme Court’s decision in *Alleyne*, a decision whose holding is not retroactive. See *United States v. Winkleman*, 746 F.3d 134, 136 (3d Cir. 2014). A review of the record and the cited cases does not reveal any grounds to disturb Petitioner’s sentence.

Further, the present Motion is more akin to a second or successive motion under 28 U.S.C. § 2255. The Court has previously ordered that a certificate of appealability would not issue. Doc. No. 230. The United States Court of Appeals for the Third Circuit affirmed this Order. Doc. No. 237. Petitioner has not obtained an order from the United States Court of Appeals authorizing a successive collateral challenge. Therefore, Petitioner’s Motion is also denied on this ground.

AND NOW, this 7th day of August, 2014, IT IS HEREBY ORDERED THAT *Pro Se* Petitioner's Motion for Issuance of a Certificate of Appealability (Doc. No. 242) is **DENIED**.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties

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